

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 20 December 2004**

**BALCA CASE No.: 2004-INA-114**

ETA Case No.: P2002-CA-09529157/VA

*In the Matter of:*

**WILLIAM AND LIBBY DOHENY,**  
*Employer,*

*on behalf of*

**DOMINGA ALVAREZ,**  
*Alien.*

Appearance: Eva Malhotra, Esquire  
Los Angeles, California  
For the Employer and the Alien

Certifying Officer: Martin Rios  
San Francisco, California

Before: Burke, Chapman, and Vittone  
Administrative Law Judges

**DECISION AND ORDER**

**PER CURIAM.** William and Libby Doheny (“the Employer”) filed an application for labor certification<sup>1</sup> on behalf of Dominga Alvarez (“the Alien”) on March 26, 2001. (AF 49).<sup>2</sup> The Employer sought to employ the Alien as a Cook, Private Household. This decision is based on the record upon which the Certifying Officer (“CO”) denied certification and the Employer’s request for review, as contained in the AF. 20 C.F.R. § 656.27(c).

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<sup>1</sup> Alien labor certification is governed by the Immigration and Nationality Act, 8 U.S.C. § 1182 (a)(5)(A) and 20 C.F.R. Part 656.

<sup>2</sup> In this decision, AF is an abbreviation for Appeal File.

## **STATEMENT OF THE CASE**

The Employer described the job duties as planning daily menus and preparing meals for a family of four, as well as special parties. The Employer noted that the cook needed to prepare special low-fat meals for a family member with a heart condition. The Employer required no advanced education, but did require two years of experience in the job offered. (AF 49).

In the Notice of Findings (“NOF”), issued September 12, 2003, the CO found that there was a question as to the bona fide nature of the job opportunity. The CO also found that the Employer failed to document lawful, job-related reasons for rejecting U.S. applicants. Three U.S. applicants all had extensive professional experience in a variety of jobs as cooks, kitchen managers, cafeteria managers, restaurant owners, catering managers, and executive chefs. The Employer rejected these applicants because they did not have experience as domestic cooks. The CO found that the U.S. workers’ experiences as professional cooks greatly exceeded the Employer’s requirement of two years of experience. The CO stated that “there is no specific evidence that experience having worked as a professional cook or chef in larger establishments is not transferable to a private home.” The CO also pointed out the Specific Vocational Preparation (“SVP”) requirement for a chef is higher than that for a domestic cook. The CO required the Employer to submit rebuttal which documented persuasively that the U.S. workers were rejected solely for lawful, job-related reasons. (AF 43-47).

In its rebuttal, dated October 8, 2003, the Employer stated that the job opportunity was bona fide. In support of this assertion, the Employer submitted responses to a list of questions included by the CO in the NOF. The Employer also included a detailed list of events and parties given by the Employer and a statement from a physician indicating that Mr. William Doheny needed to follow diet guidelines issued by the American Heart Association to lower his risk factors for heart disease. The Employer also provided IRS forms to document that the Employer’s income was sufficient to pay the proffered salary. The Employer argued that each U.S. applicant was disqualified for the job opportunity

because he or she had no household experience. The Employer argued that the position of Chef in a commercial establishment is in a distinct and separate occupational category from Domestic Cook. Therefore, the Employer argued that it was justified in disqualifying applicants who did not possess the minimum qualifications stated on the application. The Employer argued that the U.S. applicants failed to meet the Employer's minimum requirements for employment, the ability to perform the job duties. The Employer argued that applicants who lack the skill required to perform the job duties in their entirety would hinder the operation as well, thus causing financial loss. (AF 11-42).

The CO issued the Final Determination ("FD") on October 27, 2003, denying the Employer's application for labor certification. (AF 9-10). The CO determined that because the job duties of the occupations of chef and domestic cook are to a great extent the same, the Employer had not demonstrated how the U.S. applicants could not perform the duties described on the ETA 750A. The CO found that each of the named U.S. applicants had extensive cooking experience, which the CO considered to be experience in the core duties of this position. The CO concluded that the Employer had not provided a lawful, job-related reason for rejecting these U.S. applicants. The Employer had not demonstrated how their skills, developed over many years as cooks in commercial establishments, were not transferable to the occupation of cook in a private home. (AF 10).

By letter dated November 24, 2003, the Employer requested review by this Board. (AF 1). The Employer again argued that the U.S. applicants' experience as commercial chefs and/or cooks was not qualifying experience for the position as a domestic cook. The Employer argued that the differences noted in the *Dictionary of Occupational Titles* ("DOT") definitions of the two positions demonstrate that the jobs are different. The Employer emphasized the DOT definition of domestic cook included serving meals and specializing in preparing and serving dinner. The Employer argued that because none of the applicants had experience as Domestic Cook, they were not qualified because their job skills were not transferable. (AF 1-8). This matter was docketed by the Board on April 5, 2004.

## **DISCUSSION**

The Employer has argued that the U.S. applicants who had extensive and lengthy experience as cooks, kitchen managers, cafeteria managers, restaurant owners, catering managers, and executive chefs for commercial establishments did not have the two years of experience required for this job as a domestic cook because they had not worked as cooks in private households. The Employer notes that the duties for this job opportunity included preparing table settings and serving meals both daily and for special parties, in addition to the cooking duties. Because the DOT description of domestic cooks includes serving as well as cooking, the Employer argues it is different from the description of commercial cooks or chefs. However, the DOT description of chef includes supervision of personnel engaged in preparing, cooking and *serving* meats, sauces, vegetables, soups, and other foods. In addition, by focusing on this particular language in the definition of “chef,” the Employer has disregarded the catering and ownership experience of several of the U.S. applicants, which would clearly include experience in table setting and serving food, as well as cooking food. The U.S. applicants with extensive and lengthy experience in a variety of positions as cooks, chefs, caterers and restaurant owners clearly had more than two years of experience in the job duties required for this job opportunity. An applicant who meets the minimum requirement specified for a job is considered qualified for the job. *United Parcel Service*, 1990-INA-90 (Mar. 28, 1991). The Employer’s rejection of these U.S. applicants was not for lawful, job-related reasons.

The Employer’s assertion that the applicants’ skills learned in their extensive commercial cooking experience were not transferable to private cooking is without merit. The Employer provided no documentation to establish that these U.S. applicants with extensive and lengthy experience in various commercial cooking-related occupations could not transfer those skills to a private household. Nor did the Employer provide any documentation that the skills required to cook in a commercial kitchen are different in substantial degree from the skills required to cook in a private kitchen. The employer bears the burden to establish that qualified U.S. workers were lawfully rejected. *Cathay Carpet Mill*, 1987-INA-161 (Dec. 7, 1988)(*en banc*). An employer's bare assertion in

the absence of supporting evidence is insufficient to prove rejection for a lawful, job-related reason. *Custom Card d/b/a Custom Plastic Card Co.*, 1988-INA-212 (Mar. 16, 1989) (*en banc*). Thus, we agree that the Employer failed to establish that these U.S. workers with lengthy and extensive experience as commercial cooks did not possess experience in the job duties for this job opportunity as a cook in a private household. The Employer has not established lawful, job-related reasons for rejecting the U.S. applicants. Accordingly, labor certification was properly denied.

## **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel by:

**A**

Todd R. Smyth  
Secretary to the Board of Alien  
Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, NW Suite 400  
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.